THE HONOURABLE SRI JUSTICE C.V. RAMULU

W.P.NOs.9575 OF 1996 and 24096 of 1998

DATED: 29-08-2007

W.P.No.9575 OF 1996:

Between:

S. Riaz Mohammad

.. Petitioner

and

The Senior Regional Manager, Food Corporation of India, Regional Office, HUDA Building, Hyderabad and another.

.. Respondents

W.P.No.24096 OF 1998:

Between:

Smt C.Sangeeta Kumari and others

.. Petitioners

and

The Senior Regional Manager, Food Corporation of India, Regional Office, HACA Bhavan, Hyderabad and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

W.P.NOs.9575 OF 1996 and 24096 of 1998

COMMON ORDER:

W.P.NO.9575 OF 1996:

This writ petition is filed seeking a mandamus directing the respondents to pay the arrears of pay to the petitioner from the date of his notional promotion i.e. from 19.11.1979 and to fix his pay with consequential benefits, as per the decisions rendered by this Court in W.P.No.10035 of 1987 and W.P.No.14913 of 1992 and of the High Court of Madras in W.P.No.1012 of 1985, as the petitioner is similarly situated as that of the petitioners in those writ petitions.

It appears, the petitioner was appointed as Typist in the Food Corporation of India with effect from 27.08.1975, on daily wage basis, and his services were regularized with effect from 20.11.1975. Subsequently, he was promoted to the post of Assistant Grade-II (General), with effect from 19.11.1979, vide office order dated 24.01.1991, fixing notional pay with effect from 19.11.1979, in terms of Judgments of this Court in W.P.No.363 of 1987 and W.P.No.1168 of 1987, dated 20.04.1987. Though he was promoted with retrospective effect i.e. from 19.11.1979, in the said office order, it was mentioned that he is entitled for arrears of pay, if any, with effect from 31.12.1984 only. According to the petitioner, since the promotion was with retrospective effect from 19.11.1979, he is entitled for arrears from that date, but not from 31.12.1984. Further, under similar circumstances, several writ petitions were filed before this Court as well as the High Court of Madras and those writ petitions were allowed with direction to the respondents therein to make payment of arrears with effect from the

date of notional promotion. When management preferred an appeal against the order in one of those writ petitions, the same was dismissed and the Special Leave Petition was also dismissed by the Supreme Court. Therefore, he is entitled for similar treatment and entitled for arrears of pay in the cadre of Assistant Grade-II (General) with effect from the date of his notional promotion i.e. from 19.11.1979.

A detailed counter-affidavit has been filed by the respondents denying the allegations made by the petitioner and it is stated that the petitioner was promoted to the post of Assistant Grade-II (General) along with others as per the proceedings No.E-I/2/2/90-A2, dated 24.01.1991, issued by the Senior Regional Officer, Food Corporation of India, Hyderabad, re-fixing his seniority with effect from 19.11.1979, but the petitioner joined duty on 31.12.1984 only and, hence, he is entitled for arrears with effect from 31.12.1984 only.

Learned counsel for the petitioner strenuously contended that the petitioner, being similarly placed as that of the petitioners in various Judgments of this Court as well as Madras High Court, was denied of the relief, which was granted to them. Further, the resistance set up by the respondents is only to harass the petitioner.

The learned counsel for the respondents relied upon a Judgment of the Supreme Court reported in **State of Haryana and others v. O.P. Gupta and others**[1] and drawn attention of the Court to Paragraphs 6 and 9 of the said Judgment. He also relied on Judgment in Civil Appeal No. 4222 of 2006, dated 21.09.2006, and submitted that unless and until the employee assumes the duties, he is not entitled for arrears of salary. In the instant case, the petitioner has not assumed the charge on 19.11.1979 and, therefore, is not entitled

for any arrears from 19.11.1979, on account of the notional promotion. Since the petitioner assumed charge on 31.12.1984 only, he is entitled for salary from that date.

The contentions of the learned counsel for the respondents have no basis and are inconsistent with the very order of promotion passed by the respondents. In the promotional order, dated 24.01.1991, petitioner's name was shown at Serial No.8 and it was mentioned that the petitioner was promoted notionally with effect from 19.11.1979 and he is entitled to arrears, if any, with effect from 31.12.1984 only. If the contention of the learned counsel for the respondents has to be accepted, it must be deemed that the petitioner has assumed charge only after 24.01.1991 and not before. Therefore, it is clear that there is no truth in the contention of the respondents that the petitioners assumed charge only on 31.12.1984. On 31.12.1984, neither the promotion order was passed nor it was contemplated that the petitioner would be promoted notionally. Further, it is an admitted fact that the petitioner has not assumed any higher responsibility in view of the promotion with retrospective effect from 19.11.1979. He has been promoted notionally since there was stagnation and there is no question of assuming any higher responsibilities. Therefore, denying arrears of salary to the petitioner from 19.11.1979 to 31.12.1984 is arbitrary and illegal. The Hon'ble Sri Justice B.Sudershan Reddy, in his Judgment, dated 16.06.1995, in W.P.No.14913 of 1992, discussed in detail about the history of the cases that were filed before this Court as well as the Madras High Court, and the relevant portion of the said Judgment reads as under:

> "It is the case of the petitioners that there is no basis to deprive the benefit of arrears of salary with

effect from the date of promotion and the consequence flowing from such promotion cannot be denied. The petitioners assert that their promotions were postponed not because of their fault and they were in no way responsible. It is their case that even the Corporation itself has refixed the seniority and effected the notional promotion with effect from 9.7.1976 as far as petitioners 1 to 3 are concerned and 9.11.1979 as far as 4th petitioner is concerned.

The Food Corporation of India filed a counter affidavit sworn by its Senior Regional Manager. Practically, all the averments made in the affidavit filed in support of the writ petition are admitted by the respondent-Corporation in its counter affidavit. It is also further stated in the counter affidavit that all the arrears are paid to the petitioners, but only with effect from 31.12.1984. It is, however, stated in the counter affidavit that "the question of payment of arrears from notional date does not arise so long as the petitioners have not officiated in the post and the notional date is limited only for the purpose of seniority etc. The benefits granted to an employee as per Court directions cannot be ipso facto applied to other employees so long as they were not impleaded themselves in the writ petition". I am not constrained to observe that such a plea by instrumentality of the State which is directly under the control of Union Government would have been taken. It appears to me that the respondent-Corporation is only insisting this court for an order with reference to the petitioners. The only point with us for consideration in this writ petition is, as to whether the writ petitioners 1 to 3 are entitled for the arrears of pay from the dates of their notional promotion, that is to say, 9.7.1976 and 9.11.1979 as far as the 4th petitioner is concerned. The learned counsel for the petitioners Sri S.Rama Krishna Rao

placed strong reliance upon the judgment of the Madras High Court in W.P.No.1012 of 1985, dt.14.3.1986. The Madras High Court after referring to the judgment of Apex Court, reported in AIR 1971 SC 298, held that "if notional promotion, seniority etc., are to be granted on the basis that the incumbent had been deprived of his lawful right of promotion on and from the relevant date and which could be on the basis of the law as enacted and enforced, what rationale exists to strike a different note or apply a different yardstick regarding monetary benefits is not made out by the Corporation". This Court in writ petition No.10035 of 1987, dt.27.10.1989 in M.YOGANANDAM Vs. FOOD CORPORATION OF INDIA, had followed the judgment with approval. Hon'ble Sri Justice B.P.Jeevan Reddy has held "This is also the general principle. Indeed I see no basis to deprive the petitioner of the benefit of arrears of salary once his promotion with effect from 19.11.1979 stands. The petitioner is undoubtedly entitled to be promoted with effect from 19.11.1979 and if so, the consequences flowing from such promotion cannot be denied to him." Against the said judgment, a writ appeal No.712 of 1990 was preferred and a Division Bench of this Court has dismissed the appeal at the admission stage, by the orders dt. 14.6.1990.

I am of the confirmed opinion that the respondent- Corporation after refixing the seniority of the petitioners and giving notional promotions with reference to particular date is bound to pay and provide all the benefits that go along with the promotion. There is no reason or justification to withhold the same. What all the Corporation did in refixing the seniority and effecting the notional promotion is that it has recognized the petitioners' right for being promoted at an early date and for its own reason, has not effected the promotion, when the petitioners are actually due for promotion."

The said Judgment is very much applicable to the facts of the present case.

The decision in **State of Haryana and others v. O.P. Gupta and others (1 supra)**, relied upon by the learned counsel for the respondents, has no application to the facts of the present case. It was a case where, as per Regulation 9 of the Service Regulations, the very seniority of the petitioners therein was not fixed and they were entitled for promotion only after the seniority was fixed and assumed higher responsibilities. This is not one such case. In the case on hand, the petitioner was not supposed to assume any higher responsibilities. The petitioner was attending to same nature of duties as on 19.11.1979 and after 24.01.1991. Strictly speaking, this is not a promotion and it is an upgradation of the post in view of stagnation for want of promotional avenues.

Therefore, I am of the opinion that the respondents cannot deny the same relief, as was granted by this Court as well as the High Court of Madras as noticed above, to the petitioner and the petitioner is entitled to receive arrears of pay from the date of his notional promotion i.e. from 19.11.1979.

The writ petition is, accordingly, allowed. No costs.

W.P.No.24096 OF 1998:

In view of the conclusions arrived at in the above writ petition, this writ petition is also liable to be allowed and accordingly allowed.

C.V. RAMULU, J

29th August, 2007.
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[1] 1996 (7) SCC 533